

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12112 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HABIBBHAI RAJUBHAI SINDHI MUSLAMAM

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner
MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

#. The petitioner, by this petition under Article 226 of the Constitution of India challenges the order dated 22.9.2000 of the District Magistrate, Sabarkantha at Himatnagar. The petitioner was ordered to be detained

thereunder as dangerous person in exercise of the powers conferred under Section (1) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985.

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging the legality, propriety and correctness of the order aforesaid but as this petition deserves acceptance only on one ground it is not necessary as well as advisable to save judicial time of the court to refer, discuss and record finding on all those contentions. This petition was admitted on 22.9.2000 and despite of having sufficient time to their credit none of the respondent has cared to file reply to the Special Civil Application. Consequence of nonfiling of reply to the Special Civil Application is very well known that the averments made therein stand uncontroverted and the same are taken to be correct. In para 14 of the Special Civil Application the following averments are made :-

The petitioner says and submits that the petitioner has not been supplied with the statements of witnesses U/s.161 of Cr.P.C. in Cr.No.50/2000 just as Manharbhai and Devkaran Patel, in Cr. No.65/2000 Amratlal Lalchand Soni, Popatlal Baldevprasad Agrawal, Narayanlal Maliram Agrawal, Rama Awatar Maliram Agrawal, in Cr. No.106/2000 Bhikhabhai B. Patel, in Cr. No.108/2000 Sheth Rameshbhai, in Cr. No.45/2000 Babu Kramsi and in Cr. No.233/2000 Vinod Udaybhai and Sumanben Maheshbhai Kothari, Gajendrasinh and statement of Nagin Chandu Shah. In absence of those material documents petitioner is unable to make effective representation against his illegal detention. Thus his right of making representation guaranteed U/A.22(5) of the Constitution of India is violated and continued detention is illegal. And in this view of the matter detenué is required to be released forthwith from the illegal detention".

#. These are the factual averments which are not controverted and the same are taken to be correct. So, it is the case where the petitioner complained that the statements of the witnesses under Section 161 of the Cr.P.C. recorded in the criminal complaints which were made used of for the detention of the petitioner as a dangerous person have not been given and it results in deprivation of his valuable right to make effective representation guaranteed under Article 22(5) of the

Constitution. The learned counsel for the petitioner made reference to some of the decisions of this court in support of his contention. Shri Patel, learned counsel for the respondent admitted that reply is not there and he is unable to say anything on the factual aspect of the matter. From the record of the case which is available with him he submits that this grievance made by the petitioner in his representation to the State Government and on receipt of the representation the State Government has directed the detaining authority to give to the petitioner copies of those documents. However, he fairly submits that as detaining authority has not filed reply and his record is also not with him, he is not in a position to say whether that direction of the State Government has been complied with or not.

#. In the absence of any reply to the detaining authority the only consequence follows therefrom is that the petitioner has not been furnished with the copies of the statements of the witnesses recorded under Section 161 of the Cr.P.C. in the Criminal complaints which are made use of detention of the petitioner. Not only this it is also to be accepted that detaining authority despite of giving specific direction by the State Government have not cared to give the copies of these documents to the petitioner. In view of this uncontroverted factual aspect the grievance made by the petitioner that for want of the copies of these documents which are vital documents he has been deprived of his valuable right of making effective representation as guaranteed under Article 22(5) of the Constitution of India deserves acceptance.

#. It is another case which gives out that there are possibility of keeping deliberate lacunas in the order of the detention of the petitioner by the respondents so that it may be easy for him in the court to come out of the detention. This is not only the end but at the subsequent stage also all endeavour appears to have been made by the respondents that no hurdle whatsoever may come in the way of the petitioner to have his release in the matter. This is clear from the facts of the case and subsequent conduct of the respondents that they have not cared to file reply to the petition and further not to care to the direction of State Government to give the copies of these documents to the petitioner.

#. In the result, this Special Civil Application succeeds and the same is allowed. The order of detention dated 22.9.2000 is quashed and set aside and the petitioner Habibbhai Rajubhai Sindhi Muslaman, be set at

liberty, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.5,000/= as the costs of this petition to the petitioner.

#. The learned counsel for the respondents strongly opposed awarding the cost of this litigation to the petitioner. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondents. Otherwise also I consider it to be a fit case to award the costs, as litigation in the court filed by detenu or by some other person heavily costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.5,000/= as his fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage an advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approaches to him to provide his professional services he can charge his own fees. This is not only the money which is spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of these expenses and as such that cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its fault may be that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money and this money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing of the reply in the matter in the inquiry this amount of the cost has to be recovered from him. This inquiry is to be completed within a period of six months from the receipt

of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties and as a result of which the State of Gujarat has to suffer monetary loss and that amount is not recovered from the officer the House of the State of Gujarat may not be corrected.

(S.K.Keshote, J.)

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